

**Mississippi Secretary of State
2008 Business Reform Committees
Minutes of Nonprofits/Charities Law Study Group Meeting # 2
July 22, 2008**

The second meeting of the Nonprofits/Charities Law Study Group was called to order on Tuesday, July 22, 2008 at 11:00 A.M. at the Office of the Secretary of State, 700 North Street, Jackson, Mississippi. The meeting was held via teleconference. A list of persons who were present or on the telephone is attached at Exhibit A.

Chairman McCrary thanked the sub-groups for their efforts and asked for reports from the sub-group chairs.

Transparency / Compliance Sub-Group Report

Sub-Group Chair Charles Lindsay presented the following report:

1. A revision to Mississippi Code § 79-11-507, effective July 1, 2008, raised the threshold amount of annual contributions at which charities must provide the Secretary of State with an audited financial statement from \$100,000 to \$500,000. The revision also added a new requirement that charities receiving annual contributions of between \$250,000 and \$500,000 are required to submit to the Secretary of State a financial statement reviewed by an independent CPA. The sub-group unanimously endorsed the new law and did not have any suggested changes to it.
2. The sub-group explored a sliding-scale fee schedule for charities registering with the Secretary of State. Under this scheme, charities receiving contributions in a given year of less than \$250,000 would be assessed a minimal registration fee. Charities receiving contributions of between \$250,000 and \$500,000 would be assessed an intermediate fee; and charities receiving contributions of more than \$500,000 in a year would be assessed a higher registration fee.
3. The sub-group examined the \$4,000 minimum annual revenue exemption from registration. The sub-group proposed that the exemption be raised to \$25,000, which would coincide with the present Internal Revenue Service ("IRS") requirements for Form 990. As a complementary measure, the sub-group proposed expanding the Secretary of State's authority to investigate all charities, not just those which fall above the exemption threshold. Lindsay said that the Transparency / Compliance sub-group will coordinate with the Enforcement sub-group regarding expansion of the Secretary of State's power to investigate.
4. The sub-group discussed the possibility of having charities register online with the Secretary of State. Lindsay noted that the sub-group had been apprised of the Secretary of State's efforts to implement this measure. The sub-group was pleased with this effort, and offered no additional recommendation on the matter.
5. Lastly, the sub-group examined conforming registration and reporting deadlines to those of the IRS. The sub-group's position is that varied, multiple deadlines for reporting and registration are excessively punitive on smaller charities. Lindsay noted that the sub-group

was exploring legislative authority to grant these smaller charities an extension similar to the extension afforded by the IRS. He noted that the sub-group planned more research on the matter and would report its recommendation to the full Study Group at a later date.

Enforcement Sub-Group Report

Sub-group Chair Greg Pirkle noted that the sub-group had experienced a few technical issues in communicating through a blog site, but that these issues were being resolved. The sub-group expected to present to the Group a prioritized “wish-list” of desired enforcement provisions before the August 12th meeting in order of items deemed critical, items deemed beneficial, and lastly, items likely to be rejected by the charitable organization community. Pirkle noted that among the pressing items were a focus on online solicitation, the question of whether a violator’s corporate charter could be revoked for noncompliance with the law, and the general extent of criminal enforcement for violation of the laws regarding charitable solicitations. He noted that a discussion of criminal actions explored how to punish individuals who act on behalf of a charity, rather than punishing the charity itself for that person’s actions. Chairman McCrary commented that many complaints fielded by the Center for Nonprofits (the “Center”) dealt with questions of how contributions were being used. In response to McCrary’s comment, Pirkle noted that issues for the sub-group were whether it was proper for the Secretary of State to ensure that funds were used as contributors intended, and what would be the best way to enforce the proper use of funds. A representative from the Secretary of State’s Business Regulation and Enforcement Division noted that current Mississippi law allows the Secretary of State to enforce the proper use of funds, and Pirkle indicated that the sub-group’s focus was to go beyond the present statute to enhance that enforcement capability.

Certification/ Education Sub-Group Report

Sub-Group Chair Carol Burger noted that the sub-group’s recommendations would probably not require new laws to be implemented. The sub-group’s aim was to encourage charities to meet certain minimum standards by using a “seal of excellence” administered by either the Secretary of State or the Center as an incentive. The sub-group proposed a tiered system of standards, with smaller nonprofits adhering to a certain set of minimal standards and larger nonprofits meeting more stringent standards. As a model for these standards, Burger noted that the sub-group was reviewing standards of New Hampshire, Iowa, and the Better Business Bureau.

The sub-group also expected to propose best-practice standards for new organizations and was exploring incentives for new organizations to follow them. Burger noted that the sub-group would look to the Center to lead this effort. She expressed the sub-group’s intention to consult the Center to assure that the sub-group did not make any recommendations that were beyond the Center’s capacity to institute. A member agreed and noted that it would be a good policy for all sub-groups to consider both the Secretary of State’s and the Center’s ability to implement any recommendations made.

Model Nonprofit Corporation Act Report

Next, Baker noted that the American Bar Association (“ABA”) was preparing a third edition of the Model Nonprofit Corporation Act. Although a final draft was posted on the ABA website,

Baker noted that approval of the new act would not be final until at least August 8, 2008. Baker recommended no review or study of the new act by the Group at this time.

Model Registered Agents Act

Baker stated that presently Mississippi had registered agent provisions in all of its various entity acts and that adoption of a Model Registered Agents Act would provide one set of registered agent and fee provisions applicable to all the various business entities. She noted that members from the Corporations, LLCs and Partnerships, and Nonprofit study groups were assigned to a joint committee to review the viability of adopting the act. The roster of this committee is attached at Exhibit B.

Baker noted that the joint committee members would receive a notebook of materials summarizing the act and any conforming changes which would need to be made to existing business entity statutes. The four members would assist in determining how to adopt the Model Registered Agent Act in Mississippi and would later report to the Nonprofit Group.

Other Business

Chairman McCrary scheduled a teleconference meeting of the sub-group chairs for July 30, 2008, to discuss areas of concern and overlapping issues.

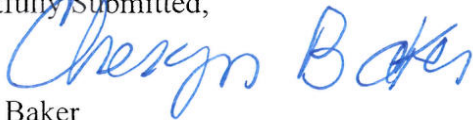
Dave Scott, Assistant Secretary of State for Business Regulation and Enforcement, referenced Mississippi Code § 79-11-507 and noted a problem when an organization willfully allowed its registration to lapse. He claimed that the statute was unclear as to the reporting requirement for such an entity. He requested that the Transparency/ Compliance and Enforcement sub-groups explore giving the Secretary of State authority to require the lapsing organization to provide a final report of its last year's activities. Without reporting of these organizations' last year's activities, Scott said, there was nothing for the public to view for the final year in existence, and thus no accountability to the contributing public.

Sub-Group Chair Lindsay noted that the Secretary of State's authority was somewhat narrow and stated that the two sub-groups would explore ways to broaden it. Sub-Group Chair Pirkle noted that one item the Enforcement Sub-Group was exploring was giving the Secretary of State subpoena power.

Next, McCrary noted that the sub-groups should be prepared to make rough-form recommendations at the August 12, 2008, Group meeting. The meeting would be followed by an open period to allow comment on these recommendations before final recommendations were due.

With no further business, the meeting was adjourned at 11:45 A.M.

Respectfully Submitted,



Cheryn Baker
Assistant Secretary of State
Policy and Research

Exhibit A
to the Minutes of Nonprofits/Charities Laws Study Group Meeting 2

In Attendance:

Mark McCrary, Chair
Greg Pirkle, Vice-Chair
Carol Burger, Vice-Chair
Ivy Allen
Chris Blount
Whitney Buchanan (for Marc Ransier)
Tom Buckley
Ruth Cook
Jan Eastman
Jet Hollingsworth
Matt Holleman
Charles Lindsay
Ed Maloney
Bill Moak
Ann Neal
Robert Paine
Eugenia Thomas
Primus Wheeler
Mike Wilbanks
Rodger Wilder
Sen. Lee Yancey
Warren Yoder
Dolphus Weary

Secretary of State Staff in Attendance

Cory Wilson, Chief of Staff
Cheryn Baker, Assistant Secretary of State, Policy and Research
Dave Scott, Assistant Secretary of State, Business Enforcement
Doug Jennings, Senior Attorney, Policy and Research
Tricia Melvin, Senior Attorney, Business Regulation and Enforcement
Melanie Thomas, Senior Attorney, Business Regulation and Enforcement
Tanya Webber, Senior Attorney, Business Regulation and Enforcement
Kathy French, Business Regulation and Enforcement
Jeff Lee, Intern